

DD/A Registry

15 February 1977

Executive Registry

77-603/3

MEMORANDUM FOR: Acting Director of Central Intelligence

THROUGH : Deputy Director for Administration

FROM : F. W. M. Janney
Director of Personnel

SUBJECT : Revision in Trial Period

15 FEB 1977

1. This memorandum responds to your note concerning a change in the present one-year trial period to a two- or three-year probationary period.

2. The current one-year trial period procedures were established in October 1971 when the Director delegated his termination authority as "head of an Agency" to the Director of Personnel. Since then, terminations of employment subsequent to the one-year trial period have been effected by the Director under section 102(c) of the National Security Act, under procedures which provided the affected employee a time-consuming and comprehensive system of review and appeal.

3. Attached to your note was a short memorandum from the Office of General Counsel expressing the opinion that the one-year requirement, which is directed only at the competitive service, does not apply to the Central Intelligence Agency. Since receipt of your note and this short OGC opinion, representatives of the Office of Personnel have had several consultations with the attorney, with the result that additional opinions, dated 2 February and 14 February 1977, have been received.

4. The more recent OGC memorandum reverses in part a 1973 OGC opinion on this subject and concludes that the Director, under his "head of an Agency" authority, is not limited to a 12-month trial period. Instead, he may establish a trial period of any length and he may also delegate his inherent "head of an Agency" termination authority to the Director of Personnel for periods that go beyond 12 months. Moreover, we understand this memorandum to mean that the review and appeal mechanisms provided heretofore only in cases of separation subsequent to the one-year trial period need not be followed when terminating the employment of an individual during any established trial period, whatever its length.

5. The new OGC position now permits the Agency to consider the merits of an extended trial period. We agree that a longer trial period would help solve problems in some components, particularly in the Operations Directorate, where the first year of employment is often devoted to formal or on-the-job training and provides no basis for making a value judgment of an employee's competence or potential. At the same time, however, we see merit in retaining the current trial period. In many instances, the first year of employment provides sufficient experience with an employee for supervisors to make a considered judgment of the individual's suitability for retention, particularly in the negative situations when the performance or conduct are clearly unsatisfactory. It would be wasteful of the Agency's resources and the employee's future to wait an additional period of time to effect termination, when the evidence for such action is available in the first year.

6. We suggest, therefore, that the Agency establish a two-phased probationary period for new employees, which includes the requirement for a formal evaluation in writing of the individual's suitability before the end of the first year and again before the end of the three-year period. Termination within the first 12 months would be by the Director of Personnel, as is now the case, on the recommendation of the Career Service and a review by the Office of Personnel. There would be no appeal. Authority to terminate employees after the first year and before the end of the three-year probationary period for unsatisfactory service also would be delegated to the Director of Personnel, in accordance with the recent OGC opinion; but the affected employee could appeal the decision to the Director. While the new OGC opinion seems to indicate the normal appeal procedures need not be followed if the Director so determines, we recommend they be retained for terminations subsequent to the initial 12 months. In today's atmosphere of openness of administration and concern for employee relations, we believe it would be in the best interest of the Agency to continue to provide an appeals mechanism in cases beyond the first year. The implication to employees of a long probationary or provisional period with simple termination procedures as a basic Agency policy could prove counterproductive to morale.

7. To avoid the ritual approval procedures which developed in the former career provisional program, a program for the three-year period should be formally established. In addition to a Fitness Report, a Career Service evaluation and positive written recommendation for

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Approved For Release 2004/02/19 : CIA-RDP80M00165A000300030011-7

retention or termination would be required. Termination recommendations would require documentation whether the Agency provides an appeals mechanism or elects simple termination. This formal program should not delay the termination of any employee whose performance or conduct at any point during the probationary period justified such action; in such cases, termination would follow the same procedures established for the one-year or three-year programs as appropriate. None of the proposals herein would utilize the Director's authority under section 102(c) of the National Security Act.

8. The three-year provisional program as proposed here will be a time-consuming evaluation and monitoring system and, to be worth the effort, will require the responsible administration and the concerned support of all supervisors and managers. Every effort must be made to avoid the routine approval procedures which developed in the former career provisional program. Managed with responsibility and judicious concern, it should strengthen our personnel management system.

9. As noted above, the OGC opinion indicates that the inherent authority in the Director as head of the Agency can be used to establish a longer probationary period than heretofore. Consequently, the OGC opinion did not need to face the question of using the Director's termination authority in section 102(c) of the National Security Act for this purpose. Apparently, as noted in paragraph 6 of the OGC opinion, delegation of the 102(c) authority has never been resolved. We are mindful that normal governmental separations and terminations are often the subject of appeals to the courts, or of legislative study and action, or sometimes even by administrative edict on the part of the Civil Service Commission. The 102(c) authority uniquely vests in the Director a powerful termination tool which has already been tested in court. We would, therefore, feel much more comfortable in expanding the existing trial period to the proposed three-year probationary period if the termination actions called for were based on the Director's 102(c) authority, rather than on the routine "head of an Agency" authority. It would, therefore, be helpful to know whether the Director's 102(c) authority can, in fact, be delegated to the Director of Personnel for the purpose of terminating employees within the three-year probationary period called for above. We plan to ask the Office of General Counsel to advise us on this.

F. W. M. Jarney

Attachments

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